

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6095
Date Complaint Filed: October 15, 2008
Date of Notification: October 17, 2008
Date of Last Response: December 8, 2008
Date Activated: January 5, 2009
Expiration of Statute of Limitations: October 3, 2013

COMPLAINANT:

Stephen Franks

RESPONDENTS:

McCain-Palin Victory Fund 2008 and Lisa Lisker, in her official capacity as treasurer
 Republican National Committee and
 Tim Johnson, in his official capacity as treasurer
 Michigan Republican Party and
 Carl Meyers, in his official capacity as treasurer
 Missouri Republican State Committee-Federal and
 Richard Pearson, in his official capacity as treasurer
 Ohio Republican Party State Central and Executive
 Committee and Sara Brown, in her official capacity as treasurer
 Republican Federal Committee of Pennsylvania and
 Patricia Poprik, in her official capacity as treasurer
 McCain-Palin Compliance Fund, Inc. and Joseph
 Schmuckler, in his official capacity as treasurer

**RELEVANT STATUTES
 AND REGULATIONS:**

2 U.S.C. § 441d
 11 C.F.R. § 102.17(c)(2)
 11 C.F.R. § 9003.3

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint alleges that then-Presidential candidate John McCain, who had agreed to accept public funding for the general election and therefore could not solicit or accept

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1 contributions for his general election campaign, violated the Federal election laws by soliciting
2 \$5,000 in funds for his general election campaign from the complainant. Complainant's
3 allegations are based on a fundraising letter and response form that he received in the mail and
4 provided with the complaint. The letter is headed "John McCain" and signed by him. It solicits
5 contributions of \$100, \$250, \$500, \$1,000 or \$5,000 for McCain-Palin Victory 2008, and states
6 at the bottom of the first page that it was paid for by that entity. According to the complaint, the
7 solicitation "buried" a paragraph stating that \$2,300 of any donation would be used for legal and
8 accounting costs incurred in the campaign, but the "entire tenor of the letter conveyed the
9 urgency of soliciting funds for the McCain-Palin Committee." Complaint at 1. The complaint
10 also states that the information concerning how the funds would be distributed on the response
11 form is displayed in such a way "that the recipient of the request from John McCain would not
12 be aware of the disposition of the funds." *Id.* at 2. Thus, the complaint concludes that the
13 mailing "is misleading, deceptive and fraudulent in that it leads recipients to believe that by the
14 mailing that they are contributing to" the McCain-Palin presidential campaign. *Id.*

15 The McCain-Palin Victory Fund 2008 ("MPV 2008") is a joint fundraising committee
16 established under 11 C.F.R. § 102.17. It is comprised of the Republican National Committee,
17 Michigan Republican Party, the Missouri Republican State Committee-Federal, the Ohio
18 Republican Party Central and Executive Committee, the Republican Federal Committee of
19 Pennsylvania and the McCain-Palin Compliance Fund.

20 MPV 2008 responded to the complaint on behalf of all the committees comprising the
21 joint fundraising committee. It states that the McCain-Palin Compliance Fund is a legal and
22 accounting fund established in conformity with 11 C.F.R. § 9003.3 and authorized by Senator
23 John McCain. According to the response, the fundraising letter and response form included all

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1 of the sponsorship, joint fundraising and compliance fund disclaimers mandated by federal law.
2 In addition, the response points out that MPV 2008, as a joint fundraising committee which
3 includes an authorized committee of a candidate, is required to include the name "McCain Palin"
4 in its name. *See Response at 2.*

5 As set forth below, MPV 2008's fundraising letter and response form met the joint
6 fundraising notification requirements mandated by federal law. However, because a compliance
7 fund was one of the participants in the joint fundraising, the fund should have ensured that the
8 mailing included language clearly stating that federal law prohibits private contributions to
9 McCain-Palin Compliance Fund from being used for the candidate's election, as required by
10 11 C.F.R. §9003.3(a)(1)(i)(A). Nevertheless, it appears that the letter and response form
11 contained sufficient information such that recipients would understand the sponsorship and
12 distribution of the funds solicited. Accordingly, we recommend that the Commission exercise its
13 prosecutorial discretion and dismiss the complaint in this matter as to the McCain-Plain
14 Compliance Fund, Inc. and Joseph Schmuckler, in his official capacity as treasurer. *See Heckler*
15 *v. Chaney*, 470 U.S. 821 (1985). We also recommend that the Commission find no reason to
16 believe that McCain-Palin Victory Fund 2008 and Lisa Lisker, in her official capacity as
17 treasurer, the Republican National Committee and Tim Johnson, in his official capacity as
18 treasurer, the Michigan Republican Party and Carl Meyers, in his official capacity as treasurer,
19 the Missouri State Republican Committee-Federal and Richard Peerson, in his official capacity
20 as treasurer, the Ohio Republican Party State Central and Executive Committee and Sara Brown,
21 in her official capacity as treasurer, and the Republican Federal Committee of Pennsylvania and
22 Patricia Poprik in her official capacity as treasurer, violated 11 C.F.R. § 9003.3(a)(1)(i)(A).

II. FACTUAL AND LEGAL ANALYSIS

A. Notification Requirements Applicable to Joint Fundraisers

Political committees that engage in joint fundraising must comply with the procedures set forth in 11 C.F.R. § 102.17(c), including providing a fundraising notice with every solicitation for contributions. The fundraising notice should include the names of all committees participating in the joint fundraising activity, the allocation formula to be used for distributing joint fundraising proceeds, a statement informing contributors that, notwithstanding the formula, they may designate their contributions for a particular participant and a statement that the formula may change if a contributor makes a contribution which would exceed the amount that the contributor may give to any participant. *See* 11 C.F.R. § 102.17(c)(2).

In the fundraising letter at issue, MPV 2008 stated that it paid for the communication, and identified the committees making up the joint fundraising committee at the bottom of the first page of the fundraising letter and at the bottom of the response form. MPV 2008 set forth the allocation formula in the response form, stating that “[u]nless a contribution would exceed federal limits or a contributor designates otherwise,” the first \$28,500 will go to the Republican National Committee, the next portion will be divided evenly between the Michigan, Missouri, Ohio and Pennsylvania state parties’ federal accounts up to a maximum of \$9,250 each and the final \$2,300 will go the Compliance Fund. Thus, it appears that MPV 2008’s fundraising notice met the requirements of 11 C.F.R. § 102.17(c)(2).

B. Solicitation Requirements Applicable to GELAC Funds

A major party candidate may receive public financing for his or her general election campaign by complying with certain requirements. To be eligible to receive payments for general election financing from the Presidential Election Campaign Fund, each Presidential and

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1 Vice Presidential candidate of a major political party shall, under penalty of perjury, certify to
2 the Commission that no contributions have been or will be accepted by the candidate for his or
3 her authorized committees except as contributions specifically solicited for, and deposited to, the
4 candidate's legal and accounting compliance fund established under 11 C.F.R. § 9003.3(a), or
5 except to the extent to make up for any deficiency in payments received from the Fund.

6 11 C.F.R. § 9003.2. A major party candidate may accept contributions to a general election legal
7 and accounting compliance fund ("GELAC") if such contributions are received and disbursed in
8 accordance with 11 C.F.R. § 9003.3. 11 C.F.R. § 9003.3(a)(1)(i). "All solicitations for
9 contributions to the GELAC shall clearly state that Federal law prohibits private contributions
10 from being used for the candidate's election and that contributions will be used solely for legal
11 and accounting services to ensure compliance with Federal law." 11 C.F.R. § 9003.3(a)(1)(i)(A).

12 The fundraising letter states that MPV 2008 includes the "McCain-Palin Compliance
13 Fund, to which federal election laws permit you to contribute up to \$2,300 to help offset the
14 McCain-Palin 2008 campaign's legal and accounting costs incurred during the campaign." The
15 response form further states that contributions to the Compliance Fund will be used "solely for
16 legal and accounting services to ensure compliance with federal law and not for campaign
17 activities." However, neither MPV 2008's letter nor the response form clearly state, with respect
18 to the McCain-Palin Compliance Fund, that Federal law prohibits private contributions from
19 being used for the candidate's election, as required by 11 C.F.R. § 9003.3(a)(1)(i)(A). Despite
20 this omission, there is sufficient information to enable recipients to determine that the mailing
21 sought funds for McCain-Palin Victory 2008, a joint fundraising committee in which the
22 McCain-Palin Compliance Fund was only one participant, and not to Senator McCain's general
23 election campaign for President, and that the funds distributed to the compliance fund will be

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1 used only for GELAC expenses. The letter references the general need to elect Republican
2 candidates in races all across the country, contains the specific notifications identifying all the
3 joint fundraising participants, specifies the allocation formula, and includes language describing
4 how the McCain-Palin Compliance Fund will use any proceeds it receives. Moreover, the
5 mailing instructs recipients to write their checks to "McCain-Palin Victory 2008" or to submit
6 their donations online at "McCainPalinVictory2008.com/win," and as noted previously,
7 disclaimers identified all of the participants in McCain-Palin Victory 2008.

8 Accordingly, because the McCain-Palin Compliance Fund did not ensure the mailing met
9 all the GELAC solicitation requirements, but the mailing otherwise adequately informed
10 recipients it sought funds for MPV 2008, and not for Senator McCain's general election
11 campaign for President, we recommend that the Commission exercise its prosecutorial discretion
12 and dismiss the complaint as to McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler, in
13 his official capacity as treasurer, and include a caution in the closing letter. *See Heckler v.*
14 *Chaney*, 470 U.S. 821 (1985). In the letter, we plan to remind McCain-Palin Compliance Fund
15 that 11 C.F.R. § 9003.3(a)(1)(i)(A) requires GELACs to clearly state that Federal law prohibits
16 private contributions from being used for the candidate's election in fundraising solicitations.
17 In addition, because the McCain-Palin Compliance Fund will be audited, we plan to include
18 language in the letter that the Commission's dismissal of this matter and the corresponding
19 portion of the Factual and Legal Analysis relate only to the allegation in the complaint in MUR
20 6095 and involves only this particular solicitation by MPV 2008.

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22 We are not aware of any prior matters involving joint fundraising committees that
23 include a compliance fund where the solicitation met all of the requirements under 11 C.F.R.

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1 § 102.17(c) for joint fundraising committees, but failed to include all of the required notifications
2 for solicitations to the GELAC under 11 C.F.R. § 9003.3(a)(1)(i)(A). However, because the
3 McCain-Palin Compliance Fund is subject to the requirements for GELAC solicitations, not
4 MPV 2008 or its other participants, we recommend that the Commission find no reason to
5 believe that McCain-Palin Victory 2008 and Lisa Lisker, in her official capacity as treasurer, the
6 Republican National Committee and Tim Johnson, in his official capacity as treasurer, the
7 Michigan Republican Party and Carl Meyers, in his official capacity as treasurer, the Missouri
8 State Republican Committee-Federal and Richard Peerson, in his official capacity as treasurer,
9 the Ohio Republican Party State Central and Executive Committee and Sara Brown, in her
10 official capacity as treasurer, and the Republican Federal Committee of Pennsylvania and
11 Patricia Poprik, in her official capacity as treasurer, violated 11 C.F.R. § 9003.3(a)(1)(i)(A).
12 Finally, we recommend that the Commission close the file.

13 **III. RECOMMENDATIONS**

- 14 1. Dismiss the complaint as to the McCain-Palin Compliance Fund, Inc. and Joseph
15 Schmuckler, in his official capacity as treasurer, and send a cautionary letter.
16
17 2. Find no reason to believe that McCain-Palin Victory Fund 2008 and Lisa Lisker, in
18 her official capacity as treasurer, the Republican National Committee and Tim
19 Johnson, in his official capacity as treasurer, the Michigan Republican Party and Carl
20 Meyers, in his official capacity as treasurer, the Missouri State Republican
21 Committee-Federal and Richard Peerson, in his official capacity as treasurer, the
22 Ohio Republican Party State Central and Executive Committee and Sara Brown, in
23 her official capacity as treasurer, the Republican Federal Committee of Pennsylvania
24 and Patricia Poprik in her official capacity as treasurer, violated 11 C.F.R.
25 § 9003.3(a)(1)(i)(A).
26
27 2. Approve the attached Factual and Legal Analysis.
28
3. Approve the appropriate letter.

4. Close the file.

5/5/09
Date

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